

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 96-0377 ITC
ADJUSTED GROSS INCOME TAX
For Years 1991, 1992, AND 1993**

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ISSUES**I. Adjusted Gross Income Tax –Federal Credit**

Authority: IC § 6-3-1-3.5 (b); IC § 6-3-4-14; Cooper Industries v. Dept. of State Rev., 673 N.E.2d 1209 (Ind. Tax 1996)

Taxpayer protests the disallowance of the Indiana parent corporation's adjusted gross income reduction by its out-of-state subsidiary corporation's loss without a corresponding adjustment to its Federal return.

STATEMENT OF FACTS

The taxpayer's businesses consist of five (5)-related corporations. The two primary corporations file Indiana returns and are Indiana based. The three subsidiary corporations are divided between one Indiana location and two out-of-state locations. The two out of state subsidiary corporations had losses of over \$900,000 in 1990, these losses being taken on the Federal returns for the out-of-state corporations in 1990. In 1992 one of the primary corporations wrote off its loan for this amount to the two subsidiary corporations, without noting the transaction on its Federal return but attempted to claim the loss on its Indiana return.

I. Adjusted Gross Income Tax –Federal Credit**DISCUSSION**

Taxpayer does not cite a specific code section in support of its protest of the Department's denial of its requested adjustment and fails to reconcile this request with IC § 6-3-1-3.5 (b). Indiana's adjusted gross income is defined as Federal "taxable income"

(as defined in Section 63 of the Internal Revenue Code) adjusted as follows.” The statute’s adjustments do not permit this reduction without the corresponding adjustments on the federal return or a consolidated Indiana filing.

Taxpayer notes that the transaction could have been shown on the Federal return as:

Companies 4 and 5 (the out-of-state subsidiaries) would have income of \$939,145 resulting from ‘Income from Forgiveness of Indebtedness.’ The 1992 federal income tax return should also have shown a bad debt deduction for Company 2 (parent corporation) because it was not going to be reimbursed the advances made by it to its subsidiaries.” Taxpayer letter of 6/27/96 page 4.

Taxpayer is emphatic that amending the federal return would have no impact on taxpayer’s federal tax obligation; conversely, taxpayer is silent as to the impact of additional revenues of \$939,145 on the subsidiary corporation’s out-of-state return.

Taxpayer maintains that filing an amended federal return would allow them to claim the loss under IC § 6-3-1-3.5 (b). If taxpayer does choose to amend its federal return to reflect the transaction in question, this finding makes no determination as to the statute of limitations or the allowance of the loss in question.

In the alternative, pursuant to IC § 6-3-4-14 and as affirmed in the holding in Cooper Industries v. Dept. of State Rev., 673 N.E.2d 1209 (Ind. Tax 1996), taxpayer could file a consolidated return including all of the financial activities for all five corporations for the years in question. This return, reflecting the comprehensive financial activity of a consolidated entity rather than a solitary selected transfer from out of state entities, would still be required to conform to IRC § 63 computations, per Cooper. Again, if taxpayer does choose to amend its Indiana returns, this finding makes no determination as to the statute of limitations or the allowance of the loss in question.

Taxpayer presents no statute or case law supporting its request to waive this statutory requirement, and this department has no authority to overturn this statute, consequently the request is denied.

FINDINGS

Taxpayer’s protest is denied.